

James David Jacobs
Frank M. Gasparo
Marcella Ballard
BAKER & McKENZIE LLP
1114 Avenue of the Americas
New York, NY 10036
Tel: 212-626-4100
Fax: 212-310-1600

Attorneys for Plaintiffs Software AG, Inc. and Software AG

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOFTWARE AG, INC. and SOFTWARE
AG,

Plaintiffs,

-against-

CONSIST SOFTWARE SOLUTIONS,
INC. f/k/a CONSIST INTERNATIONAL,
INC. and NATALIO FRIDMAN,

Defendants;

Case No. 08 Civ. 389 (CM) (FM)

**BRIEF IN SUPPORT OF MOTION TO
AMEND MOTION FOR A PRELIMINARY
INJUNCTION**

Plaintiffs Software AG, Inc. ("SAGA") and Software AG ("SAG")(collectively
"Plaintiffs" or "Software AG") move this court to amend the proposed preliminary
injunction order contained in Plaintiffs' Order to Show Cause filed on January 16, 2008.
Plaintiffs rely on the following pleadings and submissions in connection with this
Amended Notice:

- Plaintiffs' Complaint, dated January 15, 2008;
- Plaintiffs' Order to Show Cause dated January 16, 2008 including the Memorandum of Law, and declarations of David M. MacSwain (dated January 15, 2008) and Karl-Heinz Streibich (dated January 15, 2008) and the attached exhibits thereto;
- The oral argument presented at the January 16, 2008 Hearing on Plaintiffs' TRO;

- Plaintiffs' Document Request (the "Request") served January 16, 2008;
- Defendants' production of documents on January 18, 2008 in response to the Request;
- The court's January 18, 2008 memo endorsed Order(s);
- The oral argument and testimony presented at the January 24, 2008 evidentiary hearing;
- The Findings of Fact and Conclusions of Law filed by Plaintiffs on January 28, 2008;
- The court's February 1, 2008 Notice to Counsel (the "Notice"); and
- Plaintiffs' submission in response to the court's Notice, including the Memorandum of Law, declarations of James D. Jacobs; Michael Fammiller (German law); Esther Flesch (Brazilian law); Bernard Malone (Argentine law); Lucia Salaverry (Uruguay law) and the attached exhibits thereto;

Since filing the original Order to Show Cause, Plaintiffs have discovered new evidence that Consist Software Solutions, Inc. f/k/a Consist International, Inc. ("Consist") and Natalio Fridman (together "Defendants") registered additional trademarks in the 7 country territory ("Territory") in South America for Software AG's proprietary software products.

The additional registrations were not disclosed to Plaintiffs by Defendants in the January 16, 2008 TRO hearing, in sworn deposition testimony, in the January 24, 2008 evidentiary hearing on the preliminary injunction, or in Defendants' responses to the Request. Defendants disclosed only 6 Brazilian trademark registrations for ADABAS and NATURAL, Software AG's proprietary software products. Software AG has separately moved for sanctions as a result of Defendants' failure to produce this evidence pursuant to this court's January 18, 2008 memo endorsed Orders.

Accordingly, Plaintiffs were forced to undertake their own investigation in the

Territory relating to the trademark registrations held by Consist for Software AG's proprietary software products. This investigation revealed that in addition to the 6 Brazilian trademark registrations disclosed by Defendants, Consist holds at least 16 trademark registrations in Argentina (ADABAS, NATURAL, TAMINO, COM-LETE, ENTIRE and PREDICT) and 2 trademark registrations in Uruguay (ADABAS and NATURAL) for Software AG's proprietary products.

Therefore Plaintiffs' previously-requested preliminary injunction order requesting that this court order the assignment by Defendants of the "Brazilian trademark registrations for the marks ADABAS and NATURAL" is neither complete or accurate given the newly discovered evidence.

Plaintiffs thus request that the preliminary injunction order proposed in the Order to Show Cause be amended in the manner set forth immediately below.

Plaintiffs request that an Order granting a Preliminary Injunction be entered pursuant to Fed. R. Civ. P. 65(a) enjoining Defendants, their employees, their agents, their attorneys and all others acting in concert with them from:

- (i) Representing or implying that Consist has continuing rights pursuant to the Agreement or that Defendants' rights under the Agreement may be or will be reinstated;
- (ii) Offering or representing that Defendants can provide for SAG Software Products Level 2 Support, Level 3 Support, System Maintenance Releases; New Software Releases; or New Software Versions;
- (iii) Representing, promoting, advertising, or implying that Plaintiffs have authorized or otherwise falsely designating that Plaintiffs have authorized Consist to provide maintenance services for SAG Software Products, including Level 2 Support, Level 3 Support, System Maintenance Releases; New Software Releases; or New Software Versions;

(iv) Asserting any rights in Software AG's intellectual property, including the trademarks ADABAS and NATURAL and SAG Software Products;

and ordering Defendants to:

(i) Assign over to Software AG all of the trademark registrations for Software AG's proprietary software products in the Territory; and

(ii) Include in any offers, advertisements, promotions or agreements to render to customers or potential customers maintenance services for SAG Software Products in type no less prominent in face and in size than the type in which offers or statements of service are made the disclaimer that "Software Ag Does Not Authorize Consist's Maintenance Services And In No Event Can Consist Provide Level 2 Support, Level 3 Support, Software Updates Or New Software Releases"

CONCLUSION

For the reasons stated above Plaintiffs' Motion to Amend the Motion for a Preliminary Injunction should be granted.

Dated: New York, New York
February 13, 2008

BAKER & MCKENZIE LLP

By: /s/ James David Jacobs
James David Jacobs
Frank M. Gasparo
Marcella Ballard
1114 Avenue of the Americas
New York, New York 10036
(212) 626-4100

Attorneys for Defendant/Counter-Plaintiff
Software AG, Inc. and Defendant Software
AG